

This letter discusses the various tax liabilities of fund raising organizations and their suppliers. See 86 Ill. Adm. Code 130.2005, 86 Ill. Adm. Code 130.2006, 86 Ill. Adm. Code 130.2007, and 86 Ill. Adm. Code 130.2009. (This is a GIL.)

October 30, 2006

Dear Xxxxx:

This letter is in response to your letter dated February 28, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

On behalf of our client we are submitting this request to convert a recently issued General Information Letter ('GIL') to a Private Letter Ruling ('PLR') concerning the application of the Retailer's [sic] Occupation Tax ('ROT'). In addition, we respectfully request written confirmation of the verbal response received in answer to two additional questions.

This letter confirms my conversation with Ed Boggess on January 19, 2005 regarding the GIL issued by the IL Department of Revenue on November 30, 2004. We would like clarification of these issues:

- 1) If CLIENT received a valid and active E-Certificate which it has verified with the IL Department of Revenue for sales to a public or private school or not-for-profit organization of ready-made goods that the organization will sell in a fund-raising campaign, is it relieved of any further obligation to collect ROT?
- 2) If a School District recognizes an organization (such as a band booster group or PTO) by providing it their E-Number, can CLIENT accept the certificate if it is a valid and active E-Certificate which CLIENT has verified with the IL Department of Revenue?

The previously issued GIL is provided here for your convenience. All information contained in the GIL remains an accurate presentation of the facts. We would also request that the previously issued GIL be converted to a PLR. In my discussions with Mr. Boggess, he indicated that we could provide one sample contract with the customer name removed in lieu of all contracts since CLIENT uses standard contracts for all transactions. We have also attached the exemption documentation provided as well as the invoice.

Thank you for your consideration in addressing our concerns. If you have any questions regarding this request or require additional information in order to issue this ruling, please feel free to contact me.

DEPARTMENT'S RESPONSE

We apologize for the delay in responding to your request. Mr. Boggess is no longer with the Department, and your request has been forwarded to me.

The Department has previously provided guidance to your client regarding this subject that we believe provides sufficient guidance to enable your client to determine the appropriate tax liabilities. Therefore, the Department is declining to convert the previous general information letter into a private letter ruling at this time. We hope that the following information will be useful to your client in determining the tax liabilities of a supplier in a fundraising situation.

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an exemption identification number (an "E" number). See 86 Ill. Adm. Code 130.2007. This number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E-number, then its purchases are subject to tax.

Organizations that have E-numbers are also allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. These limited amounts of selling are described in 86 Ill. Adm. Code 130.2005(a)(2) through (a)(4). An exempt organization may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities (two fundraisers a year) without incurring Retailers' Occupation Tax liability. Organizations can use their E-numbers to purchase items for such limited exempt sales. However, if organizations engage in ongoing selling activities (such as Little League concession stands or sales of items in a thrift shop run by a church), they must also register with the Department as retailers, file returns and remit tax. For these types of ongoing sales, the organizations would provide their suppliers with Certificates of Resale for the items they purchase to resell and remit Retailers' Occupation Tax on their gross receipts from sales. See 86 Ill. Adm. Code 130.1405, which describes the requirements for validly executed Certificates of Resale.

In your second question, you are talking about a different kind of exemption. Under the Department's regulation "Personal Property Purchased Through Certain Fundraising Events for the Benefit of Certain Schools" 86 Ill. Adm. Code 130.2009, the Retailers' Occupation Tax does not apply to the sale of personal property purchased through fundraising events for the benefit of schools or school districts if the events are sponsored by an entity recognized by the school district that consists primarily of volunteers and includes parents and teachers of the school children.

However, the above-stated exemption does not apply to situations in which the fundraising group purchases items that it will in turn sell from a supplier who sells the items to the fundraising group for the purpose of resale and that profits from the sale to the fundraising group. A supplier in this situation should accept a Certificate of Resale from the educational organization to document that the sale is exempt from tax liability as a sale for resale.

In order for student organizations to be allowed to purchase items for resale without paying tax to their suppliers, the school, school district or treasurer appointed by the local Board of Education must apply to the Department of Revenue for a reseller's certificate to be issued in the name of the school, school district or student activity fund. Suppliers selling to teacher-sponsored student organizations for resale must obtain a Certificate of Resale. See 86 Ill. Adm. Code 130.2006(c).

The obligations of a seller with respect to accepting a Certificate of Resale were addressed in *Rock Island Tobacco v. Dept. of Revenue*, 87 Ill.App.3d 476 (3rd Dist. 1980). The *Rock Island Tobacco* court held that when a retailer obtains a proper Certificate of Resale that contains a registration or resale number that is valid on the date it is given, the retailer's liability is at an end. If the purchaser uses that item himself or herself (that is, it was not purchased for resale), the Department will proceed against the purchaser, not the retailer, provided the above stated conditions are met. While a seller will meet his or her obligation when accepting a Certificate of Resale that meets the requirements state above, a seller may refuse to accept a Certificate of Resale if the item being purchased is clearly not for resale. The Department believes that the holding in the *Rock Island Tobacco* case should also apply to the acceptance of an E-number certification from a purchaser.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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